



U.S. Department
of Transportation

**Federal Highway
Administration**

Hamilton

Memorandum

Subject: INFORMATION: Destroyed Non-Conforming Signs

Date: August 5, 1998

From: Director, Office of Real Estate Services

Reply to
Attn. of: HRE-20

To: Mr. Nicholas Graf
Division Administrator
Charlotte, North Carolina

We have reviewed the reply by Secretary Tolson dated March 31, 1998 and related messages from your office regarding re-erection of non-conforming signs damaged or destroyed by natural causes. The responses specifically addressed concerns of Mr. Dale McKeel, of Scenic, North Carolina, as to the State providing effective control of outdoor advertising as required by the 1965 Highway Beautification Act (HBA). We apologize for the delay in responding to the materials submitted, but we wanted to verify, as carefully as possible, the assertions made by the State relating to other States.

We surveyed industry and legal resources on the reference made in the State's letter regarding legal cases in Florida where signs destroyed by Hurricane Andrew had been re-erected. We also discussed the situation with officials in Florida DOT. We were unable to verify the assertion that such re-erection was permitted due to Florida court decisions, and were unable to find any other cases similar to the situation in North Carolina. Secretary Garrett's decision to permit re-erection of some 10 signs to limit the resulting economic hardship to local businesses overrode State staff objections and unfortunately did not conform with the State's applicable sign control regulations or with Federal regulations under the HBA - specifically, 23 CFR 750.707 (a)(6).

While we are concerned that NCDOT's action permitted re-erection of destroyed non-conforming signs, we are gratified that NCDOT properly denied subsequent appeals seeking permission to re-erect similarly destroyed signs, in accordance with the State's sign control regulations. We trust that this policy will be adhered to in the future, as it is critical to assuring statewide effective control expected under the HBA. We view the State's past actions as an anomaly, not sufficient to warrant the imposition of penalty provisions that could apply for not adhering to the HBA.

Since the signs were improperly re-erected on a flawed premise, and did not conform to existing State regulations, no Federal funds may be used for their acquisition or removal when the State acts to remove them.

It is our hope that the action taken recently by the State indicates a continuing willingness to fully implement the outdoor advertising control provisions under State regulation, and that such actions will meet the effective control standard provided under the HBA.



Cynthia J. Burbank

FHWA:HRE-20:JAGramatins:62030:Aug 4, 1998
modified CJBurbank/RBlack/JAGramatins July 30, 1998
cc: Reader Chron HRE-20 Gramatins
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